

## **Nevada DIRECT (NV DIRECT) Secure Messaging Service Participation Agreement**

This DIRECT Secure Messaging Service Participation Agreement (the "Agreement") is entered into between the Nevada Department of Health and Human Services (DHHS), and \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ (each a "Party" and collectively the "Parties").

### **RECITALS:**

WHEREAS, the Nevada Department of Health and Human Services ("DHHS"), is responsible for the ARRA HITECH State Health Information Exchange Cooperative Agreement.

WHEREAS, DHHS has established the Nevada DIRECT Secure Messaging service ("NV DIRECT ") to facilitate the secure electronic transfer of Patient Information for Treatment, Payment, Operations, and to facilitate "meaningful use" of Protected Health Information ("PHI"). Nevada has selected DIRECT Secure Messaging as the transmission service that complies with all applicable laws and regulations, including without limitation those protective to the privacy and security of health information.

WHEREAS, DHHS has and will enter into DIRECT Secure Messaging Service Participation Agreement ("Agreements") with a Covered Entity (as defined at 45 C.F.R §160.103) or a Business Associate of a Covered Entity (as defined at 45 C.F.R. §160.103). Such Covered Entities and Business Associates are referred to in this Agreement as "Participants".

WHEREAS, DHHS furnishes health information exchange related services and products, directly to Participants as well as through selected vendors ("Designated Subcontractors").

WHEREAS, Participants furnish, or may furnish, health care or health care related services to individuals in Nevada during the course of which they transmit or receive health care information.

WHEREAS, Participant desires to access and use the services set forth below, and DHHS agrees to furnish such services under the terms of this Agreement, including the General Terms and Conditions of Participation, as amended from time to time, (the "Terms and Conditions").

WHEREAS, capitalized terms used, but not defined in the body of this Agreement, shall have the meanings given to them in the Terms and Conditions.

NOW, THEREFORE, In consideration of the Recitals and the mutual agreements that follow, the parties agree as follow:

### **Definitions**

For purposes of the Agreement and these Terms and Conditions, the following capitalized terms and phrases shall have the following meanings ascribed to such terms and phrases:

- a) "Agreement" means the Nevada DIRECT Secure Messaging Participation Agreement entered into by and between Department of Health and Human Services and Participant.
- b) "Applicable Law" shall mean all applicable state and federal statutes, rules and regulations governing the activities of Participants in connection with this Agreement;
- c) "Authorized User" means an employee or independent contractor of Participant that is provided with a NV DIRECT email address by the Participant to receive or transmit Patient Information on Participant's behalf;

- d) "Covered Entity" health plans, health care clearinghouses, and health care providers who electronically transmit any health information in connection with transactions for which federal HHS has adopted standards (as defined at 45 C.F.R. § 160.103).
- e) "Business Associate" a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, a covered entity (as defined at 45 C.F.R. § 160.103).
- f) "Designated Subcontractors" Selected vendors whom will furnish health information exchange related services and products directly to Participants.
- g) "DHHS" Nevada Department of Health and Human Services.
- h) "Effective Date" After the application is deemed complete and accepted by DHHS and once email account and password are issued to the Participant.
- i) "Individual" shall mean a person who is the subject of Patient Information and shall include Personal Representatives in accordance with 45 C.F.R. § 164.502(g);
- j) "NV DIRECT" shall mean the DIRECT point to point secure electronic messaging service provided by DHHS through its designated subcontractors.
- k) "Participant" Covered Entity or Business Associate whom will enter into NV DIRECT Secure Messaging Service Participation Agreements with the Nevada Department of Health and Human Services.
- l) "Patient Information" shall mean information that is divulged, released, transferred, or made accessible by Participant, or by DHHS, through NV DIRECT , and shall further include, but not be limited to, protected health information (as such term is defined at 45 C.F.R. § 160.103), individually identifiable information, de-identified data (as such term is defined at 45 C.F.R. § 164.514), pseudonymized data, metadata and schema; and
- m) "PHI" Protected Health Information as such term is defined at 45 C.F.R. § 160.103.
- n) "Nevada Provider Directory" shall mean the database accessible to Participant and Participant's Authorized Users containing email addresses of NV DIRECT subscribers, including Participant and its Authorized Users.

### **Agreement**

- 1. Services and Support.** DHHS shall furnish the following to Participant:
  - a) Access to NV DIRECT ; provided, however, that DHHS and NV Direct shall not be responsible for or verify the accuracy of any message content or the authorization of any individual to send, receive, use, or disclose particular information and/or Patient Information;
  - b) Online Documentation only on how to access and use the NV DIRECT;
  - c) A Participant Help Desk and Fault Priority Level support services described in the Service Level Agreement attached hereto as Exhibit A and incorporated herein by reference.
  - d) All certifications necessary for Participant to access the NV DIRECT.
  - e) Any other custom, professional, or technical services as agreed in a writing signed by the parties from time to time.
  - f) Create and maintain for five (5) years an audit trail of Participant's (including each Participant Authorized User) email transactions.
- 2. Permitted Purposes for this Nevada DIRECT Secure Messaging Service.** Participant agrees to use NV DIRECT to send Patient Information to, or use Patient Information received from other participants only in strict compliance with HIPAA, HITECH and all other Applicable Law and for only the following (the "Permitted Purposes"):
  - a) Participant's or another health care provider's Treatment (as that term is defined in the HIPAA Regulations) of the individual who is the subject of the PHI sent or received by Participant or a Participant Authorized User.

- b) Participant's or another Covered Entity's Health Care Operations (as that term is defined in the HIPAA Regulations); provided, however, that in the case of Participant's disclosure of PHI to another Covered Entity: (i) Participant and the other Covered Entity each had or shall have a Treatment relationship with the Individual who is the subject of the PHI; (ii) the disclosure is for a purpose permitted by the HIPAA Regulations; and (iii) Participant shall disclose or request and use only the Minimum Necessary (as that term is defined in the HIPAA Regulations) PHI.
- c) Public health activities, as permitted by Applicable Law.
  - i. Reporting on clinical quality and other measures to demonstrate "meaningful use," as specified in regulations promulgated by the Department of Health and Human Services, or other payer incentive or accreditation programs, to the extent permitted by Applicable Law.
  - ii. Each disclosure and each receipt of Patient Information by Participant through NV DIRECT Secure Messaging shall constitute a warranty and certification by Participant that Participant is complying with this Agreement.

**3. Responsibilities of Participant.** Participant shall:

- a) Access and use NV DIRECT, only in strict compliance with Applicable Law;
- b) Comply, and have each Authorized User comply, with this Agreement;
- c) Register with DHHS as a Participant in NV DIRECT ;
- d) Provide a completed and notarized Identity Verification Form;
- e) Provide its own web browser and the workstations, desktops, laptops or other hardware, software, and applications as necessary to access the internet;
- f) Provide its own information system/computer security measures to protect against any unauthorized use of NV DIRECT and PHI; this includes, but is not limited to, firewalls, intrusion detection, anti-virus, and security solutions;
- g) Enter into written agreements with its Authorized Users requiring such Authorized Users to comply with all of the terms and conditions of this Agreement as and to the same extent that such terms and conditions are imposed upon and applicable to Participant, and shall make such written agreements available for review and inspection by DHHS upon DHHS's request;
- h) At all times during the Term of this Agreement remain a Covered Entity (as defined at 45 C.F.R. § 160.103) or a Business Associate (as defined at 45 C.F.R. § 160.103) of a Covered Entity;
- i) Update its information with DHHS as necessary and required, including Authorized User information to maintain an up to date Nevada Provider Directory;
- j) Permit its registration information to be audited for consistency with other information sources;
- k) Be solely responsible for the use, nonuse, and interpretation of any Patient Information it receives, and the accuracy of any Patient Information it sends, using NV DIRECT;
- l) Acknowledges and agrees that NV Direct and its Designated Subcontractor are simply providing a conduit for emails, data, and PHI to be shared with all Participants on the system; and
- m) Ensure appropriate security, agreeing that all access, processing or storage of Protected Health Information as defined by HIPAA that is related to this Agreement will be conducted within the geographic boundaries of the United States.

**4. Term**

The term of this Agreement shall commence on the Effective Date and shall continue in effect thereafter through December 31, 2013.

**5. Subcontractors**

DHHS may delegate its responsibilities to one or more subcontractors; provided, however, that DHHS shall require each subcontractor to agree that: (i) subcontractor shall comply with the security and confidentiality provisions of this Agreement and (ii) subcontractor shall comply with all Applicable Law.

## **6. Termination of NV DIRECT subscription.**

- a) Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.
- b) DHHS may terminate this Agreement, and all of Participant's rights hereunder, upon written notice to Participant in the event of either of the following:
  - i. the breach by Participant of any of the terms and conditions of this Agreement, which breach remains uncured for a period of thirty (30) or more days following Participant's receipt of written notice from DHHS of such breach;
  - ii. if Participant has become a party to the NV DIRECT Participation Agreement, the breach by Participant of any of the terms and conditions of the Participation Agreement, which breach remains uncured beyond any cure periods available to Participant thereunder with respect to the applicable breach; or
  - iii. the breach or violation by Participant or its Authorized User of any of DHHS's data privacy and security policies or any applicable law intended to protect the improper use or disclosure of Health Information in connection with Participant's or its Authorized User's use of NV DIRECT , as applicable.
- c) Participant may terminate this Agreement in the event of DHHS's breach of any of the terms and conditions of this Agreement, which breach remains uncured for a period of thirty (30) or more days following DHHS's receipt of written notice from Participant of such breach.

## **7. Insurance**

Participant shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Participant, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. DHHS in no way warrants that the minimum limits contained herein are sufficient to protect the Participant from liabilities that might arise out of the performance of the work under this Agreement by the Participant, his agents, representatives, employees or subcontractors and Participant is free to purchase additional insurance as may be determined necessary.

- a) **MINIMUM SCOPE AND LIMITS OF INSURANCE;** Participant shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.
  - i) **Commercial General Liability- Occurrence Form**  
Policy shall include bodily injury, property damage and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products- Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000
  - ii) **Professional Liability (Errors and Omissions Liability)**  
The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

• Each Claim	\$1,000,000
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- Annual Aggregate \$2,000,000

In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Participant warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

- b) **VERIFICATION OF COVERAGE:** Participant shall furnish DHHS with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. All certificates required by this Agreement shall be sent directly to Department of Health and Human Services, Office of Health Information Technology, 1000 E. William Street, Room 209, Carson City, NV 89701. DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE RISK MANAGEMENT DIVISION.
- c) **SUBCONTRACTORS:** Participant's certificate(s) shall include all subcontractors as additional insured under its policies or Participant shall furnish to the State separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.
- d) **APPROVAL:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

## **8. Disclaimers**

- a) **CARRIER LINES.** Carrier lines are selected by the Participant and are provided by common carriers not part of the NV DIRECT messaging system. It is the duty of the Participant to validate that the selected carrier provides secure lines. THE PARTIES ACKNOWLEDGE THAT ACCESS TO THE NV DIRECT SERVICES, IS PROVIDED OVER VARIOUS FACILITIES AND COMMUNICATION LINES, AND INFORMATION WILL BE TRANSMITTED OVER SUCH FACILITIES AND COMMUNICATIONS LINES, OVER LOCAL EXCHANGE AND INTERNET BACKBONE CARRIER LINES, AND THROUGH ROUTERS, SWITCHES, AND OTHER DEVICES (COLLECTIVELY, "CARRIER LINES") THAT ARE OWNED, MAINTAINED AND SERVICED BY THIRD-PARTY CARRIERS, UTILITIES, AND INTERNET SERVICE PROVIDERS, ALL OF WHICH ARE SELECTED BY PROVIDER AS THE MEANS OF ACCESSING NV DIRECT AND WHICH ARE BEYOND DHHS'S CONTROL OR THE CONTROL OF ITS DESIGNATED SUBCONTRACTOR. IT IS THE DUTY OF THE PARTICIPANT TO OBTAIN SECURE CARRIER LINES. DHHS HEREBY DISCLAIMS FOR ITSELF AND ITS DESIGNATED SUBCONTRACTOR ANY AND ALL LIABILITY FOR OR RELATING TO THE INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION WHILE IT IS TRANSMITTED ON, THROUGH OR OVER THE CARRIER LINES, OR ANY DELAY, FAILURE, INTERRUPTION, INTERCEPTION, LOSS, TRANSMISSION, OR CORRUPTION OF ANY PATIENT INFORMATION OR OTHER INFORMATION OF ANY NATURE WHATSOEVER ATTRIBUTABLE TO TRANSMISSION ON, THROUGH OR OVER THE CARRIER LINES. USE OF THE CARRIER LINES IS SOLELY AT THE RISK OF PARTICIPANT AND ITS AUTHORIZED USERS, AND IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, NATIONAL AND INTERNATIONAL LAWS.
- b) **DHHS SERVICES .** THE NV DIRECT SERVICE PROVIDED BY DHHS PURSUANT TO THIS AGREEMENT IS PROVIDED ON AN "AS IS" BASIS ONLY. ACCORDINGLY, BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DHHS DOES NOT REPRESENT OR WARRANT THAT THE NV DIRECT SERVICE, OR ASSOCIATED SOFTWARE USED AND OR MADE AVAILABLE BY DHHS IN CONNECTION THEREWITH, WILL MEET THE REQUIREMENTS OF ANY PERSON OR WILL OPERATE ERROR-FREE OR CONTINUOUSLY AND DHHS HEREBY DISCLAIMS FOR ITSELF AND ITS DESIGNATED SUBCONTRACTOR

ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES AND REPRESENTATIONS CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY ONE OR MORE OF THE SERVICES REFERRED TO ABOVE. THE PARTIES AGREE THAT NO AGREEMENTS, REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT HAVE BEEN MADE ONE TO THE OTHER.

- c) PATIENT INFORMATION. PATIENT INFORMATION THAT MAY BE TRANSMITTED OR RECEIVED VIA OR OTHERWISE PROVIDED TO PARTICIPANTS AND THEIR AUTHORIZED USERS THROUGH THE UTILIZATION OF NV DIRECT SERVICES, IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WHETHER STATUTORY OR COMMON LAW, ARISING FROM COURSE OF DEALING OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. DHHS FOR ITSELF AND ITS DESIGNATED SUBCONTRACTOR DOES NOT WARRANT AND MAKES NO REPRESENTATIONS THAT THE PERFORMANCE OF THE NV DIRECT OR THE DELIVERY OF PATIENT INFORMATION THEREBY, WILL BE TIMELY, UNINTERRUPTED, OR ERROR-FREE.
- d) DHHS and its Designated Subcontractors are not responsible for the accuracy and completeness of data transmitted or received by Participant or Authorized Users except expressly provided in this Agreement.

#### **9. Limitation of Liability**

- a) IN CIRCUMSTANCES INVOLVING HARM TO THIRD PARTIES CAUSED BY THE ACTS OR OMISSIONS OF AN PARTICIPANT OR OTHER INDIVIDUAL THAT ACCESSES PATIENT INFORMATION OR OTHER INFORMATION THROUGH THE NV DIRECT SERVICE, WHETHER SUCH ACCESS IS AUTHORIZED OR UNAUTHORIZED, BY USE OF ANY SECURITY CREDENTIAL RECEIVED OR OBTAINED, DIRECTLY OR INDIRECTLY, LAWFULLY OR UNLAWFULLY, FROM PARTICIPANT, DHHS, ANY OF PARTICIPANT'S AUTHORIZED USERS, OR A MEMBER OF DHHS'S AUTHORIZED WORKFORCE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND THIS AGREEMENT, EACH PARTY SHALL BE RESPONSIBLE FOR SUCH HARM TO THE EXTENT THAT THE SUBJECT INDIVIDUAL'S ACCESS WAS CAUSED BY OR ATTRIBUTABLE TO SUCH PARTY'S BREACH OF THIS AGREEMENT, OR SUCH PARTY'S NEGLIGENT OR INTENTIONALLY WRONGFUL CONDUCT. THIS SECTION 11(A) SHALL NOT BE CONSTRUED AS A HOLD HARMLESS OR INDEMNIFICATION PROVISION. TO THE EXTENT THAT PARTICIPANT IS PROHIBITED BY APPLICABLE LAW FROM BEING SUBJECT TO THE LIABILITY LIMITATIONS OUTLINED IN THIS SECTION 11(A), PARTICIPANT SHALL BE EXEMPT FROM THE RESTRICTIONS SET FORTH IN THIS SECTION 11(A). IF PARTICIPANT IS AN AGENCY OF THE STATE OF NEVADA, THE PROVISIONS, RELATING TO SOVEREIGN IMMUNITY, SHALL GOVERN.
- b) DHHS, ON ITS BEHALF AND ON BEHALF OF DESIGNATED SUBCONTRACTOR, DO NOT ASSUME ANY ROLE IN, AND SHALL HAVE NO LIABILITY FOR, THE CARE OF ANY INDIVIDUAL OR OUTCOMES THEREFROM. PARTICIPANT AND PARTICIPANT'S AUTHORIZED USERS SHALL BE SOLELY RESPONSIBLE FOR ALL DECISIONS AND ACTIONS TAKEN OR NOT TAKEN INVOLVING PATIENT CARE, UTILIZATION MANAGEMENT, AND QUALITY MANAGEMENT OF INDIVIDUALS RESULTING FROM OR IN ANY WAY RELATED TO THE USE OF THE NV DIRECT AND PATIENT INFORMATION MADE AVAILABLE THEREBY. NEITHER PARTICIPANT NOR ANY OF ITS AUTHORIZED USERS SHALL HAVE ANY RECOURSE AGAINST, AND EACH HEREBY WAIVES, ANY AND ALL CLAIMS AGAINST DHHS AND/OR ITS DESIGNATED SUBCONTRACTOR FOR ANY LOSS, DAMAGE, CLAIM OR COST RELATING TO OR RESULTING FROM PARTICIPANT'S OR ITS AUTHORIZED USERS' USE OR MISUSE OF THE NV DIRECT OR ANY PATIENT INFORMATION. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments.
- c) THE PARTIES ACKNOWLEDGE THAT PATIENT INFORMATION MADE AVAILABLE THROUGH THE NV DIRECT SERVICE IS SUBJECT TO CHANGE DUE TO NUMEROUS FACTORS, INCLUDING WITHOUT LIMITATION, CHANGES TO PATIENT INFORMATION MADE AT THE REQUEST OF THE SUBJECT



INDIVIDUAL, CHANGES IN SUCH INDIVIDUAL'S HEALTH CONDITION, AND THE PASSAGE OF TIME. NEITHER PARTY TO THIS AGREEMENT SHALL HAVE RESPONSIBILITY FOR, OR LIABILITY TO THE OTHER WITH RESPECT TO, THE ACCURACY, CONTENT, CURRENCY, COMPLETENESS, OR DELIVERY OF ANY PATIENT INFORMATION PROVIDED BY DHHS OR BY ITS DESIGNATED SUBCONTRACTOR, A PARTICIPANT OR A PARTICIPANT'S AUTHORIZED USERS TO OR THROUGH THE NV DIRECT SERVICE.

- d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL AGGREGATE LIABILITY OF DHHS FOR ITSELF AND FOR ITS DESIGNATED SUBCONTRACTOR, IN THE AGGREGATE, , REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, UNDER THIS AGREEMENT OR WITH RESPECT TO THE NV SERVICE MADE AVAILABLE BY DHHS HEREUNDER, SHALL BE LIMITED TO THE FEES PAID TO DHHS BY PARTICIPANT, AND RETAINED BY DHHS, DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE APPLICABLE DEMAND(S) AND OR CLAIM(S). NOTWITHSTANDING THE FOREGOING, NEITHER DHHS NOR ITS DESIGNATED SUBCONTRACTOR NOR PARTICIPANT SHALL HAVE ANY LIABILITY TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES ARISING FROM THE COURSE OF SUCH PARTY'S PERFORMANCE OF, OR OMISSION TO PERFORM, ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT.

#### **10. Indemnity.**

- a) Participant shall protect, defend, indemnify, and hold DHHS and Designated Subcontractor, and DHHS's officers, directors, agents, contractors, and employees harmless from and against any and all third party claims, demands, actions, or suits brought against DHHS or its Designated Subcontractor, and any and all losses, costs, reasonable expenses (including reasonable attorneys' fees), damages, liabilities, recoveries and judgments of every nature or description brought against DHHS or its Designated Subcontractor, or any of the foregoing officers, directors, agents and employees of DHHS and arising out of (i) the performance by Participant of the obligations to be performed by it hereunder, (ii) any breach by Participant of any representation or warranty made by it under this Agreement, and (iii) any breach by Participant of its obligations, agreements or covenants under this Agreement.

#### **11. Notices.**

Unless otherwise specified, termination shall not be effective until thirty (30) calendar days after a party has served written notice of termination for default, or notice of termination without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

#### **12. Authority; no conflict.**

DHHS and Participant each represent and warrant to the other as follows: (i) that it is authorized to enter into this Agreement and to perform its obligations hereunder, and that the individual signatory executing this Agreement on its behalf is authorized, and has the capacity, to so execute this Agreement on its behalf, and (ii) that the execution of this Agreement by it and the performance of its obligations hereunder shall not conflict with or result in, with or without the passage of time or the giving of notice thereof, any breach, default or violation of any third party agreement to which it is bound, or any judgment, order or ruling of any court, administrative or regulatory agency or body, or arbitration award, to which it is bound or subject.

**13. Relationship.**

The relationship between the parties to this Agreement is strictly that of independent contractors, and this Agreement shall not create a partnership or any other form of business relationship, or create an agency relationship, between the parties hereto. Neither party to this Agreement shall, nor shall either party have any authority to, create or incur any liability or obligation on behalf of the other.

**14. Assignment.**

Participant shall not assign, sublicense or otherwise transfer in any manner any of Participant's rights and obligations under this Agreement without the prior written consent of DHHS in each instance. The parties acknowledge that it is the desire of DHHS to establish a non-profit governing organization for health information exchanges within the State of Nevada. DHHS reserves the right to transfer this Agreement to any such organization upon written notice to Participant should such organization become operational during the term of this Agreement.

**15. Attorney's fees.**

In the event of any action brought by either party against the other arising out of this Agreement, or for the purposes of enforcing the Agreement or collection of any damages alleged to have resulted to one of the parties by reason of the breach or failure of performance of the other, the party prevailing in any such action shall be entitled to recover reasonable attorneys' fees and cost of suit as may be determined by the court.

**16. Severability.**

In the event any one or more provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other instrument or document, and this Agreement and such other instruments and documents shall be interpreted and construed as if such invalid, illegal or unenforceable provision had never been contained therein.

**17. Binding Effect.**

The rights and obligations of the parties to this Agreement shall be binding upon and inure to the benefit of their respective successors and permitted assigns.

**18. Entire Agreement/ Integrated Agreement.**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral statements or agreements between the parties with respect to the subject matter in this Agreement. This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof.

**19. Governing Law.**

This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict of laws that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Agreement.

**20. Survival.**



The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance by the parties shall so survive the completion of the performance, expiration, or termination of this Agreement.

**21. Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**22. Miscellaneous.**

Each party represents and warrants that the individual executing this Agreement has read and understood its terms and is duly authorized to execute and deliver this Agreement.

IN WITNESS WHEREOF, the parties have executed the Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

DHHS

PARTICIPANT

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Signature:

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Signature:

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Date: